

8 SYNOPSIS: Certain incentives provided for film
9 industry projects ended in 2006.

10 This bill would seek to attract the
11 entertainment industry to develop qualified
12 productions in Alabama and to thereby contribute to
13 the state and local economies by providing
14 employment and entrepreneurial opportunities for
15 Alabamians. The bill would provide incentives for
16 qualified production companies by providing certain
17 state rebates, and sales, use, and lodging tax
18 exemptions for qualified production companies in
19 the entertainment industry working on qualified
20 productions.

21 The bill would also provide that in order to
22 offset lost revenues resulting from the incentives,
23 rebates, and exemptions offered to attract the
24 entertainment industry, the bill would modify
25 existing law with respect to various forms of
26 partnerships and limited liability companies to
27 require the filing of a composite income tax return

1 with the Alabama Department of Revenue on behalf of
2 certain nonresident partners or members and
3 remittance of Alabama income tax at the highest tax
4 rate applicable to those nonresident owners.
5 Exemptions from this requirement are provided for
6 "qualified investment partnerships" and publicly
7 traded partnerships as defined by IRC Section
8 7704(b), or if the Alabama Department of Revenue
9 issues a regulation or ruling that exempts a
10 particular nonresident owner or class of
11 nonresident owners from the composite return filing
12 requirement.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to the development in Alabama of the
19 entertainment industry; to attract investment for qualified
20 productions and qualified production companies; to help
21 encourage increased employment opportunities within the state
22 for the entertainment industry and increased global
23 competition with other states in fully developing economic
24 development options in Alabama within the industry; to provide
25 rebates for qualified production projects; to provide
26 exemptions from certain sales, use, and lodging taxes for
27 production companies working in Alabama; to add new provisions

1 to the Code of Alabama 1975, relating to income taxes and
2 investment partnerships and limited liability companies; to
3 require filing composite returns and remittance of taxes on
4 certain nonresident partners or members; to provide for
5 exemptions; to provide an offset for lost revenues resulting
6 from the incentives offered; to specifically repeal inactive
7 statutes providing exemptions which have expired by repealing
8 Act 2001-975, 2001 Regular Session, as amended by Act
9 2005-305, 2005 Special Session, and to specifically repeal
10 Section 40-18-24.1, Code of Alabama 1975.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. This act may be cited as the
13 "Entertainment Industry Incentive Act of 2008."

14 Section 2. The following is hereby found and
15 declared by the Legislature of Alabama:

16 (1) Although Alabama is filled with attractive
17 natural resources, a growing workforce, and other resources
18 attractive to the entertainment industry, Alabama has not
19 developed its potential in terms of attracting the
20 entertainment industry to the state by offering production
21 incentives for qualified productions not previously offered in
22 Alabama.

23 (2) Entertainment industry incentives offered by
24 other states attract valuable projects to their states which
25 stimulate local economies, use local manpower, offer other
26 employment and entrepreneurial opportunities for state

1 residents, and provide public awareness of the natural
2 resources available in their states.

3 (3) Because Alabama does not currently offer a
4 viable incentive package to the industry, Alabama cannot
5 effectively compete with other states for attracting industry
6 projects and those projects locate elsewhere.

7 (4) For Alabama to compete nationally or
8 internationally for the location and production of more
9 projects in Alabama and to foster a growing entertainment
10 industry in Alabama, industry specific production incentives
11 are immediately necessary.

12 (5) The Legislature recognizes and confirms the
13 planning and promotion of the entertainment industry are of
14 vital importance to the economic development of Alabama as are
15 the recruitment, expansion, and retention of industrial
16 development within the state, and the promotion of the
17 entertainment industry should be included as an integral part
18 of any comprehensive economic development strategy plan
19 promoted by the state and state agencies.

20 Section 3. For purposes of this act, the following
21 terms shall have the following meanings:

22 (1) COMPANY. A corporation, partnership, limited
23 liability company, or any other business entity.

24 (2) DEPARTMENT. The Alabama Department of Revenue.

25 (3) ENTERTAINMENT INDUSTRY. Those persons or
26 entities engaged in the production of entertainment content as
27 herein defined under paragraph a. of subdivision (8).

1 (4) EXPENDED IN ALABAMA. In the case of tangible
2 property, property which is acquired or leased from a source
3 within the State of Alabama; in the case of services, services
4 performed for a qualified production project in the State of
5 Alabama.

6 (5) OFFICE. The Alabama Film Office.

7 (6) PAYROLL. All salary, wages, and other
8 compensation, including related benefits, including
9 specifically, but not limited to, compensation and benefits
10 provided to resident and nonresident producers, directors,
11 writers, actors, and other personnel involved in qualified
12 production projects in Alabama.

13 (7) PRODUCTION EXPENDITURES.

14 a. The term includes preproduction, production, and
15 postproduction expenditures incurred in the State of Alabama
16 that are directly used in a state-certified production,
17 including, but not limited to, the following: Set construction
18 and operation, wardrobe, makeup, set accessories, and related
19 services; costs associated with photography and sound
20 synchronization, lighting, and related services and materials;
21 editing and related services; rental of facilities and
22 equipment; leasing of vehicles; costs of food and lodging;
23 cost of catering; digital or tape editing, film processing,
24 transfer of film to tape or digital format; transfer direct to
25 DVD, cable, or satellite for distribution; sound mixing,
26 special and visual effects including duplication, film
27 processing digital, DVD, music composition, and satellite

1 distribution; total aggregate payroll; music; airfare;
2 insurance costs of bonding; or other similar production
3 expenditures as determined by rule or regulation.

4 b. The term includes financial contributions or
5 educational or workforce development in partnership with
6 related educational institutions, or local industry
7 organizations, or both, contributed toward the furtherance of
8 the local entertainment media industries.

9 c. The term does not include postproduction
10 expenditures for marketing or any amounts that are paid to
11 persons or entities as a result of their participation in
12 profits from the exploitation of a motion picture production.

13 (8) QUALIFIED PRODUCTION.

14 a. The term means entertainment content created in
15 whole or in part within the state, including motion pictures;
16 soundtracks for motion pictures; documentaries; long-form,
17 specials, miniseries, series, sound recordings, videos and
18 music videos, and interstitials television programming;
19 interactive television; interactive games; video games;
20 commercials; infomercials; any format of digital media,
21 including an interactive website that is intended for national
22 or international distribution or exhibition to the general
23 public; and any trailer, pilot, video teaser, or demo created
24 primarily to stimulate the sale, marketing, promotion, or
25 exploitation of future investment in either a product or a
26 qualified production via any means and media in any digital

1 media format, film, or videotape, provided such program meets
2 all the underlying criteria of a qualified production.

3 b. The term does not include any ongoing television
4 program created primarily as news, weather, or financial
5 market reports, a production featuring current events,
6 sporting events, an awards show or other gala event, a
7 production whose sole purpose is fund-raising, a long-form
8 production that primarily markets a product or service, a
9 production used for corporate training or in-house corporate
10 advertising or other similar productions; nor does the term
11 include any production for which records are required to be
12 maintained under 18 U.S.C. §2257 with respect to sexually
13 explicit content; nor does the term mean or include any form
14 of gambling, gaming, wagering, or pari-mutuel wagering
15 activity or enterprise.

16 (9) QUALIFIED PRODUCTION COMPANY.

17 a. The term means a company engaged in the business
18 of producing a Qualified Production, as that term is defined.

19 b. The term does not mean or include any company
20 owned, affiliated, or controlled, in whole or in part, by any
21 company or person which is in default on a loan.

22 (10) RESIDENT OF ALABAMA. A natural person and, for
23 the purpose of determining eligibility for the incentives
24 provided by this act, any person domiciled in the State of
25 Alabama and any other person who maintains a permanent place
26 of abode within the state and spends in the aggregate more
27 than six months of each year within the State of Alabama.

1 (11) STATE-CERTIFIED PRODUCTION. A Qualified
2 Production approved by the office, produced by a Qualified
3 Production Company.

4 Section 4. (a) Beginning January 1, 2008, a
5 Qualified Production Company shall be entitled to a rebate for
6 Production Expenditures, as defined in this act, related to a
7 State-Certified Production. The rebate shall be equal to 25
8 percent of the State-Certified Production's Production
9 Expenditures excluding payroll paid to residents of Alabama
10 plus 35 percent of all payroll paid to residents of Alabama
11 for the State-Certified Production, provided the total
12 Production Expenditures for a project must equal or exceed at
13 least five hundred thousand dollars (\$500,000), but must not
14 exceed ten million dollars (\$10,000,000). A single episode in
15 a television series shall be considered a single production
16 project for purposes of this section.

17 (b) A qualified production company shall be entitled
18 to the rebate for production expenditures as provided in
19 subsection (a) for a qualified project that is limited only to
20 the production of a soundtrack used in a motion picture,
21 provided that the production expenditures for the soundtrack
22 project must equal or exceed at least fifty thousand dollars
23 (\$50,000), but must not exceed three hundred thousand dollars
24 (\$300,000).

25 (c) The rebate described in this section may be
26 applied to any income tax liability applicable to a Qualified
27 Production Company.

1 (d) If the rebate under this section exceeds a
2 Qualified Production Company's Alabama income tax liability,
3 the excess of rebate over liability shall be rebated to the
4 Qualified Production Company.

5 (e) The Commissioner of the Department of Revenue
6 shall promulgate rules necessary to administer this section.

7 Section 5. Commercial or financial information given
8 in confidence that is not required to be disclosed pursuant to
9 this act or any other state statute, and trade secrets,
10 including, but not limited to, information relating to
11 formulas, patterns, compilations, programs, devices, methods,
12 techniques, processes, drawings, cost data, customer lists,
13 film or television scripts, or detailed production budgets
14 shall be treated by the Office and the Department as
15 proprietary and confidential.

16 Section 6. A Qualified Production Company that
17 intends to expend in the aggregate one hundred fifty thousand
18 dollars (\$150,000) or more in connection with one or more
19 Qualified Productions in the State of Alabama within a
20 consecutive 12-month period, upon making application for,
21 meeting the requirements of, and receiving written
22 certification of that designation from the Office, shall be
23 exempted from the payment of state sales, use, and lodging
24 taxes levied pursuant to Sections 40-23-2, 40-23-61, and
25 40-26-1, respectively, of the Code of Alabama 1975, on funds
26 expended in Alabama in connection with the Qualified
27 Productions.

1 Section 7. (a) A Qualified Production Company that
2 intends to produce all or any part of a Qualified Production
3 project in Alabama and desires to be exempted from the payment
4 of state sales, use, and lodging taxes levied pursuant to
5 Sections 40-23-2, 40-23-61, and 40-26-1, respectively, of the
6 Code of Alabama 1975, shall provide an estimate of total
7 expenditures expected to be made in Alabama in connection with
8 the production project. The estimate of expenditures shall be
9 filed with the Office before the commencement of the project
10 in Alabama.

11 (b) At the time the Qualified Production Company
12 provides the estimate of expenditures to the Department, it
13 also shall designate a member or representative of the company
14 to work with the Office and the Department on reporting of
15 expenditures and other information necessary to take advantage
16 of the sales, use, and lodging tax exemptions afforded by this
17 act.

18 (c) (1) An application for the sales, use, and
19 lodging tax exemptions provided herein may be accepted only
20 from those Qualified Production Companies that report
21 anticipated expenditures in the State of Alabama in the
22 aggregate equal to or exceeding one hundred fifty thousand
23 dollars (\$150,000) in connection with the production of one or
24 more Qualified Production projects in the State of Alabama
25 within a consecutive 12-month period.

26 (2) The application shall be approved by the Office.

1 (3) Once the application is approved by the Office,
2 the Department shall issue sales, use, and lodging tax
3 exemption certificates to the Qualified Production Company as
4 evidence of the exemptions. The exemptions are effective on
5 the date the certificate is issued by the Department.

6 (d) A Qualified Production Company that is approved
7 and receives sales, use, and lodging tax exemption
8 certificates, but fails to expend one hundred fifty thousand
9 dollars (\$150,000) within a consecutive 12-month period, is
10 liable for the sales, use, and lodging taxes that would have
11 been paid had the approval not been granted; except that the
12 company must be given a 60-day period in which to pay the
13 sales, use, and lodging taxes without incurring penalties. The
14 sales, use, and lodging taxes are considered due as of the
15 date the tangible personal property was purchased in or
16 brought into Alabama for use, storage, or consumption for
17 purposes of state sales and use taxes and due as of the date
18 that lodgings occur for purposes of state lodging taxes.

19 (e) Upon completion of a Qualified Production, the
20 company shall return the sales, use, and lodging tax exemption
21 certificates to the Department and submit a report to the
22 Office of the actual expenditures made in Alabama in
23 connection with the Qualified Production.

24 (f) Notwithstanding any provision of Act 98-192 of
25 the 1998 Regular Session (Acts 1998, p. 310), the sales and
26 use tax exemption provided for herein shall only apply to the
27 state sales and use tax.

1 Section 8. The Department and the Office may
2 collectively promulgate rules as are necessary to implement
3 and administer this act.

4 Section 9. For fiscal years ending September 30,
5 2008, the aggregate cap of incentives granted under the
6 provisions of this bill shall not exceed five million dollars
7 (\$5,000,000) for all Qualified Production Companies. For
8 fiscal years ending September 30, 2009, the aggregate cap of
9 incentives granted under the provisions of this bill shall not
10 exceed seven million five hundred thousand dollars
11 (\$7,500,000) for all Qualified Production Companies. For
12 fiscal years ending September 30, 2010, and for all subsequent
13 fiscal years thereafter, the aggregate cap of incentives
14 granted under the provisions of this bill shall not exceed ten
15 million dollars (\$10,000,000) for all Qualified Production
16 Companies.

17 Section 10. The following new sections are added to
18 the Code of Alabama 1975, to read as follows:

19 §40-18-24.2.

20 (a) For purposes of this section and Section
21 40-18-24.3, the following terms shall have the following
22 meanings:

23 (1) MEMBER. An individual, estate, trust, business
24 trust as defined in Section 40-18-1, a corporation as defined
25 in Section 40-18-1, or Subchapter K entity as defined in
26 Section 40-18-1, that is a partner in a general, limited,

1 limited liability, or limited liability limited partnership,
2 or a member of a limited liability company.

3 (2) NONRESIDENT. a. An individual who is not a
4 resident of or domiciled in this state during the applicable
5 tax year; b. a nonresident trust as defined in Section
6 40-18-1; c. a nonresident estate as defined in Section
7 40-18-1; d. a foreign corporation as defined in Section
8 40-18-1, not commercially domiciled in this state during the
9 applicable tax year; and e. a Subchapter K entity or business
10 trust that is created or organized under the laws of a
11 jurisdiction other than this state and that is not
12 commercially domiciled in this state.

13 (3) PASS-THROUGH ENTITY. A partnership or other
14 entity classified as a Subchapter K entity under Section
15 40-18-1. Neither estates nor trusts, including business
16 trusts, are included in this definition or subject to this
17 section except in their capacity as a nonresident member, as
18 herein defined, of a pass-through entity or lower-tier
19 pass-through entity.

20 (4) QUALIFIED INVESTMENT PARTNERSHIP. A partnership
21 or other entity classified as a Subchapter K entity, or a
22 business trust as defined in Section 40-18-1, that meets all
23 of the following requirements for the applicable tax period:

24 a. No less than 90 percent of the cost of the
25 entity's total assets consists of qualifying investment
26 securities and office facilities and tangible personal

1 property reasonably necessary to carry on its activities in
2 this state as an investment partnership.

3 b. No less than 90 percent of its gross income
4 consists of interest, dividends, distributions, and gains and
5 losses from the sale or exchange of qualifying investment
6 securities, and management fees paid by its members.

7 c. An authorized officer, partner, member, or
8 manager of the entity files on behalf of the entity a
9 certification that it meets the above two criteria with
10 respect to the tax period covered by the certification, in a
11 form and at the time prescribed by the Department of Revenue.

12 (5) QUALIFYING INVESTMENT SECURITIES. Except as
13 provided in Section 40-18-24.3, includes all of the following:

14 a. Common stock, including preferred or debt
15 securities convertible into common stock; and preferred stock,
16 including debt securities convertible into preferred stock.

17 b. Bonds, debentures, and other debt securities.

18 c. Deposits and any other obligations of banks and
19 other financial institutions.

20 d. Stock and bond index securities, future
21 contracts, derivative securities, warrants or options on
22 securities, and other similar financial securities and
23 instruments.

24 e. Interests in a Subchapter K entity that itself
25 qualifies as a qualified investment partnership.

26 f. Other similar or related financial or investments
27 contracts, instruments, or securities.

1 (b)(1) Except as provided in subsection (c), a
2 pass-through entity shall file with the Department of Revenue,
3 at the time the entity's annual return is required to be filed
4 with the Department of Revenue for each taxable year, a
5 composite income tax return on behalf of its nonresident
6 members and shall report and pay the income tax imposed by
7 this chapter at the highest applicable marginal rate provided
8 in Section 40-18-5 on the nonresident members' distributive
9 shares of the income of the pass-through entity apportioned
10 and allocated at the entity level to this state under Chapter
11 27 of this title.

12 (2) A nonresident member that has been included in a
13 composite income tax return filed pursuant to this section may
14 file its own Alabama income tax return and shall receive
15 credit for Alabama income tax paid on the member's behalf by
16 the pass-through entity.

17 (3) The Department of Revenue may enter into
18 agreements to permit the filing of annual composite income tax
19 returns on behalf of one or more nonresident owners of
20 pass-through entities who are not defined as nonresident
21 members above, or of other forms of business entities the
22 income of which is taxable at the owner level.

23 (c)(1) The pass-through entity shall be liable to
24 the State of Alabama for the payment of the tax required to be
25 remitted under this section, together with applicable interest
26 and penalties, but shall not be liable to any such member for
27 any amount withheld from distributions to or the distributive

1 share of such member and remitted in compliance with this
2 section. A member of a pass-through entity that is itself a
3 pass-through entity (a "lower-tier pass-through entity") shall
4 be subject to the same requirement to file a composite income
5 tax return with respect to the distributive share of the
6 apportioned and allocated income of the lower-tier
7 pass-through entity. The Department of Revenue shall apply the
8 Alabama income tax remitted by a pass-through entity on behalf
9 of the lower-tier pass-through entity to the remittance
10 obligation imposed by this subsection on the lower-tier
11 pass-through entity.

12 (2) A pass-through entity shall, at the time of
13 payment pursuant to this section, deliver to the Department of
14 Revenue a return on a form prescribed by the department
15 showing the total amounts paid or credited to its nonresident
16 members, the amounts of income tax remitted in accordance with
17 this section, if any, and any other information the department
18 may reasonably require. A pass-through entity shall furnish to
19 its nonresident members annually, but not later than the 15th
20 day of the third month after the end of its taxable year, a
21 record of the amount of Alabama income tax remitted on behalf
22 of such member, on a form prescribed by the department.

23 (3) Notwithstanding subsection (b), a pass-through
24 entity shall not be required to remit Alabama income tax on
25 behalf of a nonresident member if any of the following
26 applies:

1 a. The Department of Revenue determines by
2 regulation or ruling that the nonresident member's income
3 should not be subject to composite return reporting, such as a
4 member that is exempt from Alabama Income Tax.

5 b. The pass-through entity is a qualified investment
6 partnership, or a publicly traded partnership as defined by 26
7 U.S.C. §7704(b) that is treated as a partnership for federal
8 income tax purposes, which provides for inspection by the
9 Department of Revenue upon reasonable notice a list of the
10 names of each of its nonresident owners or unit holders
11 together with their addresses, taxpayer identification
12 numbers, and other information reasonably requested by the
13 department.

14 §40-18-24.3.

15 (a) Notwithstanding any other provision of this
16 chapter to the contrary, including Sections 40-18-2 and
17 40-18-24.2, no income tax shall be due the State of Alabama
18 from a nonresident member of a qualified investment
19 partnership, or from the qualified investment partnership
20 itself, with respect to the nonresident member's distributive
21 share of interest, dividends, distributions, or gains and
22 losses from qualifying investment securities owned by the
23 entity, as long as the nonresident member does not actively
24 participate in the day-to-day management of the entity.
25 Provided, however, that in the event a qualified investment
26 partnership invests in the qualifying investment securities of
27 an entity that is majority owned by a nonresident member of

1 the qualified investment partnership, income tax shall be due
2 by such nonresident member with respect to the member's
3 distributive share of any interest, dividends, distributions,
4 or gains and losses from the qualifying investment securities
5 of the other entity. For purposes of this section and Section
6 40-18-24.2, "majority owned" means ownership of more than 50
7 percent of the issued and outstanding voting stock of the
8 other entity, applying the attribution rules of 26 U.S.C.
9 §318.

10 (b) The terms "nonresident," "member," "qualified
11 investment partnership," and "qualifying investment
12 securities" shall have the same meanings ascribed to them in
13 Section 40-18-24.2.

14 (c) The Department of Revenue shall promulgate
15 reasonable rules to effectuate the intent of this section,
16 including rules permitting certain corporate members of
17 qualified investment partnerships to be eligible for the
18 provisions of this section. Further, if the Commissioner of
19 Revenue determines that this section is being used in an
20 abusive fashion principally to avoid Alabama income tax
21 liability, the commissioner shall have the authority to
22 promulgate rules to distribute, apportion, or allocate gross
23 income in order to clearly reflect the income of any such
24 entity engaged in such tax avoidance.

25 Section 11. All laws or parts of laws which conflict
26 with this act are repealed, including, but not limited to, Act
27 2001-975, 2001 Regular Session, as amended by Act 2005-305,

1 2005 Special Session, and Section 40-18-24.1, Code of Alabama
2 1975.

3 Section 12. It is the express intent of the new
4 Sections 40-18-24.2 and 40-18-24.3 of the Code of Alabama
5 1975, added by Section 10 to provide an offset for lost
6 revenues provided by the incentives, rebates, and exemptions
7 provided to the entertainment industry in this act.

8 Section 13. The provisions of this act are
9 severable. If any part of this act is declared invalid or
10 unconstitutional, that declaration shall not affect the part
11 which remains.

12 Section 14. (a) Except as provided in subsection
13 (b), this act shall become effective immediately following its
14 passage and approval by the Governor, or its otherwise
15 becoming law, and shall apply retroactively to January 1,
16 2008, for purposes of qualifying for rebates, and sales, use,
17 and lodging tax exemptions provided in this act.

18 (b) Section 40-18-24.2 and Section 40-18-24.3, Code
19 of Alabama 1975, added by Section 10 of this act shall become
20 effective for all tax years beginning after December 31, 2008,
21 following its passage and approval by the Governor, or its
22 otherwise becoming law.